

Great American Insurance, Far West Consulting's workers' compensation insurance carrier at the time of G. M.'s accident on July 2, 1999, asks the Utah Labor Commission to review Administrative Law Judge George's award of benefits to Mrs. M. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over Great American's motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

Mrs. M. alleges injury to her lower back from work-related accidents at Far West on July 7, 1996, and/or July 2, 1999. Judge George held an evidentiary hearing on Mrs. M.'s claim on August 9, 2000, then on January 14, 2003, referred the matter to a medical panel. The panel issued its report on February 25, 2003. Great American filed objections on March 17, 2003. On January 29, 2004, Judge George issued his decision rejecting Great American's objections, adopting the panel's report, and awarding benefits to Mrs. M..

Great American now requests Commission review of Judge George's decision. First, Great American argues that Mrs. M. is not entitled to workers' compensation benefits for the accident of July 2, 1999, because that accident is not the legal cause of her low-back problems. Second, Great American contends that, even if Ms. M. is generally entitled to workers' compensation benefits for the July 1999 accident, her right to temporary total disability compensation ended no later than July 10, 2000, when, according to Great American, she reached medical stability.

FINDINGS OF FACT

The Commission finds the following facts relevant to the issues raised by Great American's motion for review.

Mrs. M. began work as a waitress for Far West during July 1995. Over the next several months, she had two episodes of transitory back pain. Then, on July 2, 1996, she slipped and fell while at work, resulting in another episode of low-back pain. She received medical treatment and missed a few days of work. On March 23, 1998, she had another temporary episode of low-back pain. After each of the foregoing incidents, Mrs. M. recovered and was able to resume her full work duties.

On July 2, 1999, once again while working at Far West, Mrs. M. lifted a rack of glasses. She felt immediate extreme pain in her lower back. She sought medical attention the next day, where it was noted that the pain was radiating into the left leg. She was given medication and taken off work.

Over time, her pain worsened. She underwent various treatments, including epidural injections, physical therapy and pain counseling. This treatment has not been successful and Ms. M. has not achieved medical stability from the July 1999 accident. In particular, she requires medical

assistance in weaning herself from pain medication and evaluation by an experienced spine surgeon to determine whether surgery is necessary.

DISCUSSION AND CONCLUSION OF LAW

As previously noted, Great American contends Mrs. M. is not entitled to any workers' compensation benefits for the low-back injuries caused by her accident at work on July 2, 1999. Great American also argues that, even if Mrs. M. is entitled to benefits, her right to temporary total disability compensation ended no later than July 10, 2000, when she purportedly reached medical stability. The Commission will consider each of these arguments in turn.

Compensability of Mrs. M.'s July 1999 injury. The Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. Utah Code Ann. §34A-2-401. To qualify for benefits, an injured worker must establish that his or her work was **both** the "legal cause" and the "medical cause" of the injury in question. Allen v. Industrial Commission, 729 P.2d 19, 25 (Utah 1986). The central issue in Mrs. M.'s claim is whether the events at her work on July 2, 1999, are the legal cause of the back injury for which she now claims workers' compensation benefits.

In Price River Coal Co. v. Industrial Commission, 731 P.2d 1079, 1082 (Utah 1986), the Utah Supreme Court described the test for legal causation as follows:

Under Allen, an usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some unusual or extraordinary exertion over and above the "usual wear and tear and exertions of nonemployment life." The requirement of "unusual or extraordinary exertion" is designed to screen out those injuries that result from a personal condition which the worker brings to the job, rather than from exertions required of the employee in the workplace. (Citations omitted.)

However, the mere fact that an injured worker suffers from a pre-existing condition does not necessarily trigger the application of the more stringent prong of the Allen test for legal causation. It is also necessary to show that the pre-existing condition **contributes** to the injury for which benefits are sought. Nyrehn v. Industrial Commission, 800 P.2d 330, 334 (Utah App. 1990).

The Commission has carefully reviewed the reports and opinions of Dr. Moress, Dr. Knoebell and the impartial medical panel. A fair reading of the medical panel's report provides no basis to conclude that Mrs. M.'s pre-existing back problems contributed to her current injuries. The same may be said for Dr. Moress's report. While Dr. Knoebell has expressed a contrary opinion, the Commission finds that the preponderance of evidence does not establish that Mrs. M.'s pre-existing degenerative spinal problems contribute to her current injuries. Consequently, she is not required to satisfy the more stringent prong of the Allen test for legal causation, but is merely required to show a usual or ordinary exertion.

In light of the foregoing, the Commission concludes that Mrs. M. has met her burden of

proving legal causation. Since that is Great American's only objection to the underlying compensability of Mrs. M.'s claim, the Commission concludes that the claim is compensable.

Duration of temporary total disability compensation. Having determined that Mrs. M.'s injury from the July 1999 work accident is compensable, the Commission turns to the question of how long Mrs. M. is entitled to receive temporary total disability compensation.

In Booms v. Rapp Construction Co., 720 P.2d 1363 (Utah 1986), the Utah Supreme Court discussed the proper duration of temporary total disability compensation:

In Entwistle v. Wilkins, we indicated that total temporary benefits are to continue "until (the claimant's) condition has stabilized." (Citation omitted.) Stabilization means that the period of healing has ended and the condition of the claimant will not materially improve. Once healing has ended, the permanent nature of the claimant's disability can be assessed and benefits awarded accordingly. Once a claimant reaches medical stabilization, the claimant is moved from temporary to permanent status and he is no longer eligible for temporary benefits.

Applying the foregoing standard to Mrs. M.'s injury, she is entitled to temporary total disability compensation until her low back injury reaches medical stability. The medical panel is of the opinion that Mrs. M. has not yet reached medical stability, and will not reach stability until she is weaned from "multiple addictive medications" and the possibility of spinal surgery is explored. The Commission accepts the medical panel's opinion and, on that basis, concludes that Mrs. M. has not yet reached medical stability and is, therefore, entitled to continuing temporary disability compensation.

ORDER

The Commission denies Great American's motion for review and affirms Judge George's award of benefits to Mrs. M.. It is so ordered.

Dated this 3rd day of August, 2004.

R. Lee Ellertson, Commissioner